

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

SABRINA L. HANEY
Organ Law Offices, P.C.
Terre Haute, Indiana

ATTORNEY FOR APPELLEE:

ROWDY G. WILLIAMS
Rowdy G. Williams Law Firm
Terre Haute, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE ADOPTION OF C.M.M.)	
)	
JULIE PARKER (PASTORIOUS))	
)	
Appellant-Respondent,)	
)	
vs.)	No. 84A01-0610-CV-480
)	
ANNAMARIA MILLER,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE VIGO CIRCUIT COURT
The Honorable David R. Bolk, Judge
Cause No. 84C01-0506-AD-66

May 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Julie Pastorious, formerly Julie Parker, appeals from the trial court's order granting appellee-petitioner Annamaria Miller's petition to adopt Julie's biological child, C.M.M., and terminating Julie's parental rights. Specifically, Julie contends that there is insufficient evidence in the record supporting the trial court's conclusion that Julie's consent to the adoption was not statutorily required. Finding no error, we affirm the judgment of the trial court.

FACTS

C.M.M. was born on August 6, 1992, to Julie and Russell Miller. Paternity was established in 1994 and, at that time, Julie had custody of C.M.M. and Russell had visitation rights. Shortly thereafter, Julie became concerned about her "increasing drug use" and decided to leave C.M.M. in Russell's care. Appellant's Br. p. 8.

Julie was imprisoned in Illinois from 2001 until November 2002 on charges related to the manufacture of methamphetamine. Upon being released, Julie returned to Indiana and was imprisoned in this state between March and July 2004 for possession of cocaine. She was then transferred back to Illinois, where she remained in prison until October 8, 2004. Upon Julie's release from prison, Russell filed a petition to require Julie to have supervised visitation with C.M.M., and the trial court granted his petition.

Between 1994 and the time of the hearing in August 2006, Julie saw C.M.M. approximately fourteen times. After Julie was released from prison on October 8, 2004, she saw C.M.M. only twice. The last time Julie saw her son was in October 2004. During this

same period of time, she exercised visitation with her other son, who lived within two miles of C.M.M.'s home, nearly every weekend.

Russell began dating Annamaria in May 2003, and they were married in 2004. On June 16, 2005, Annamaria filed a petition to adopt C.M.M. and alleged that Julie's consent to the adoption was unnecessary because Julie had failed to engage in significant communication with C.M.M. for at least one year without justifiable cause and had knowingly failed to provide for C.M.M.'s support when able to do so. On March 2, 2006, Julie objected to the petition and contested the adoption. Following a hearing, the trial court granted Annamaria's petition and terminated Julie's parental rights on September 11, 2006. Julie now appeals.

DISCUSSION AND DECISION

Julie argues that the trial court erroneously concluded that her consent to the adoption of C.M.M. was not required. We will not disturb the trial court's ruling in an adoption case unless the evidence leads to but one conclusion and the trial court reached the opposite conclusion. McElvain v. Hite, 800 N.E.2d 947, 948 (Ind. Ct. App. 2003). We will neither reweigh the evidence nor judge the credibility of witnesses in reviewing the trial court's decision. Id. Instead, we will examine the evidence most favorable to the trial court's decision and the reasonable inferences that may be drawn therefrom to determine whether sufficient evidence exists to affirm the decision. Id.

When a petitioner is attempting to adopt without the natural parent's consent, we turn to Indiana Code section 31-19-9-8(a)(2), which provides that the natural parent's consent is not required if, for a period of at least one year, the parent:

- (A) fails without justifiable cause to communicate significantly with the child when able to do so; or
- (B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

Inasmuch as the statute is phrased in the disjunctive, either of these two elements is sufficient to dispense with the need for parental consent. In re Adoption of J.P., 713 N.E.2d 873, 875 (Ind. Ct. App. 1999).

In considering whether the parent has engaged in significant communication with the child, we note that if the parent "has made only token efforts . . . to communicate with the child, the court may declare the child abandoned by the parent." I.C. 31-19-9-8(b). The frequency of visits, alone, is an invalid basis for gauging whether significant communication has occurred; instead, we must consider whether the communication was meaningful. J.P., 713 N.E.2d at 876. Notwithstanding the parent's actual intent, a significant factor in this analysis is whether the parent carelessly and negligently failed to perform her parental duties. Id.

Here, Julie left C.M.M. in Russell's care in 1994 and has only seen her son approximately fourteen times in twelve years. After being released from jail on October 8, 2004, Julie saw C.M.M. only twice—once for a forty-five minute supervised visit and once at her other son's birthday party. She made only one other effort to see C.M.M. prior to the filing of the petition when she telephoned Russell, who rebuffed the attempt. Aside from

that, Julie has not attempted to see C.M.M. even though she has seen her other son, who lives within two miles of C.M.M., nearly every weekend. Under these circumstances, we find that Julie has made only token efforts to communicate with C.M.M. since leaving him in Russell's care in 1994, that her communication with her son has not been significant, and that she has carelessly and negligently failed to perform her parental duties. Consequently, the trial court did not err by granting Annamaria's petition for adoption without Julie's consent or by terminating Julie's parental rights to C.M.M.¹

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

¹ Inasmuch as we find that Julie failed to engage in significant communication with C.M.M. for at least one year, we need not consider whether she also knowingly failed to provide for C.M.M.'s care and support when able to do so.